Re Papp

IN THE MATTER OF:

The Rules of the Investment Industry Regulatory Organization of Canada (IIROC)

and

Roland Papp

2016 IIROC 51

Investment Industry Regulatory Organization of Canada
Hearing Panel (Ontario District)

Written Decision: December 13, 2016

Hearing Panel:
John Lorn McDougall, QC, Chair, F. Michael Walsh and Nick Savona
Appearances:
Rob DelFrate, Senior Enforcement Counsel
Roland Papp In Person

DECISION AND REASONS - SANCTION

I. INTRODUCTION

¶ 1 On 20 October, 2016 the Hearing Panel released its Decision and Reasons for its findings that Mr. Papp was guilty of Counts #1 and #2, which Counts are as follows:

> **Count #1**
>
> Between February 2005 and June 2014, the Respondent maintained brokerage accounts outside of his Dealer Member, without the knowledge or consent of his Dealer Member, contrary to IIROC Dealer Member Rule 29.1; and
>
> **Count #2**
>
> Between February 2005 and June 2014, the Respondent made untrue and misleading statements to his Dealer Member as well as to the other Dealer Members at which he maintained brokerage accounts, contrary to IIROC Dealer Member Rule 29.1.

¶ 2 At the conclusion of those Decision and Reasons, we indicated that, as Staff and Mr. Papp wished to determine whether an agreement as to the appropriate sanctions to recommend to the Hearing Panel could be reached, we would delay the sanction hearing until we were advised of the outcome of the discussions. In the event, it turned out that such an agreement could not be reached.

¶ 3 Staff elected not to file further written submissions on sanctions as that subject had been fully briefed in its original written submissions dated September 14, 2016. Mr. Papp filed a short written brief dated November 2, 2016 in which he commented on the penalties sought by Staff.

¶ 4 The Hearing Panel was subsequently advised that the parties had each decided that oral submissions

were not needed and the Hearing Panel accepted the joint request that they be waived.

II. STAFF'S SUBMISSIONS

¶ 5 Staff submitted that the following penalties were warranted in this case:

i. A fine in the amount of $40,000;

ii. A four year prohibition on the Respondent's re-registration with IIROC; and

iii. Costs in the amount of $10,000.

¶ 6 Staff submitted that these severe penalties were warranted given the seriousness of the Respondent's misconduct and that they are in keeping with IIROC's mandate to set out and enforce high quality regulatory and investment industry standards, protect investors and strengthen market integrity while maintaining efficient and competitive capital markets.

¶ 7 Staff further submitted, and the Hearing Panel agrees, that sanctions imposed in a securities regulatory context should be preventive, protective and prospective in nature.

¶ 8 In support of that submission, Staff referred to the IIROC Sanction Guidelines at p. 4 and *Re Mills*, [2001] I.D.A.C.D. No. 7 as follows:

> Industry expectations and understandings are particularly relevant to general deterrence. If a penalty is less than industry understandings would lead its members to expect for the conduct under consideration, it may undermine the goals of the Association's disciplinary process; similarly, excessive penalties may reduce respect for the process and concomitantly diminish its deterrent effect. Thus the responsibility of the [hearing panel] in a penalty hearing is to determine a penalty appropriate to the conduct and respondent before it, reflecting that its primary purpose is prevention, rather than punishment. (emphasis added)

¶ 9 The Respondent held and maintained an Interactive Brokers account throughout the time he was a registrant with RBCDS. He also opened a second Interactive Brokers account as well as two additional accounts at Questrade. In his annual questionnaires, he continuously provided misleading and incorrect information to RBCDS.

¶ 10 The Respondent had multiple opportunities to reconsider the non-disclosure of the accounts. Instead, he chose to continue on. The ongoing and repeated nature of his misconduct should be viewed as an aggravating factor in Staff's submission, one with which the Hearing Panel agrees.

¶ 11 As noted above, the Respondent's conduct in this case was intentional. The Respondent knew or ought to have known that outside accounts were prohibited by RBCDS yet he completely disregarded these prohibitions. He knew or ought to have known that his accounts at Interactive Brokers and Questrade should have been coded as "Pro" accounts, yet he took no steps to inform either of these firms. He knew information provided to RBCDS during their investigation was incorrect.

III. SUBMISSIONS OF ROLAND PAPP

¶ 12 Mr. Papp's written submissions to the Hearing Panel begin with a reminder that nothing he did caused any damage or had any other adverse impact on any clients, their funds or any business of any member firm.

¶ 13 Mr. Papp asserts that the sanctions sought by Staff are wholly inappropriate and border on the vindictive as IIROC does not have any prior cases like this where "…the transgression was of such a minor nature". As he did in oral argument on September 16, 2016, Mr. Papp again relies in his written submissions on the *Sawisky* case. That case ended with a settlement agreement following an investigation in which the Respondent fully cooperated. It also involved a factual matrix which was quite different than the present case. In all the circumstances, particularly because settlement cases are not reliable comparables for those which are opposed and in which the Respondent is uncooperative, the Hearing Panel finds no significant guidance from it, particularly in relation to the issue whether a suspension is appropriate in the present case.

¶ 14 Mr. Papp notes, correctly, that he has no prior disciplinary record with any regulatory body, nor any member firm. He points out that he has "…already paid the ultimate price in this matter, as I have lost a job which I loved and enjoyed dearly". He continues that a further suspension would not be justified for such a minor transgression.

¶ 15 Mr. Papp submits that, if it was such an important matter for IIROC and the member firms to know of a registrant's trading accounts, they are negligent in not using the tools at their disposal to obtain the information themselves. In his view, a registrant should be able to self-regulate in respect of their own personal trading just as the industry self regulates itself.

¶ 16 Finally, Mr. Papp submits that if the Hearing Panel decides to impose further penalties they not be more severe than those agreed to in the *Sawisky* case which involved in addition to an agreed fine, a requirement to rewrite the examination based on the Conduct and Practice Handbook course and be subject to close supervision for one year following any re-registration in addition to the usual supervision for new registrants. No suspension was ordered.

IV. ANALYSIS AND DECISION

¶ 17 Each of the arguments made by Mr. Papp in his Submissions on Sanction, including his reliance on the *Sawisky* case, was made by him in his oral submissions to the Hearing Panel during the liability hearing. Each was fully dealt with in the Reasons and Decision on liability. See Paragraphs 14 – 31 inclusive and 33 – 42 inclusive. They will not be repeated here.

¶ 18 The Hearing Panel's Conclusion in its Reasons and Decision liability sums up both its findings with respect to what Mr. Papp now calls a minor transgression and explains why we consider he is quite wrong in that characterization of his conduct. That summary is found in paragraphs 43 and 44 of the Conclusion and is as follows:

> 43. In *Morrison (Re)*, [2009] IIROC No. 4 at para 51, the Hearing Panel wrote the following which is apposite in the present case:
>
> > `The securities industry is a business of trust and confidence. Approved Persons must above all conduct themselves with trustworthiness and integrity, and act in an honest and fair manner in all their dealings with the public, their clients, and the securities industry as a whole. Approved Persons have agreed to abide by and comply with the Association's By-laws, and that includes the duty to cooperate in any investigation. As was said in *Re Stewart* (supra), there is a general principle that the requirement to cooperate in any investigation is fundamental to maintaining an efficient, competitive market environment, and also to maintain the integrity of the securities system and protect the public interest.
>
> 44. It is clear beyond any reasonable doubt that the Respondent felt no obligation to behave in the fashion mandated in the *Morrison* case, *supra.* Instead, he distained his professional obligations in a number of ways, the most egregious of which were his ignoring of the rules against having outside accounts and the duty to be forthright and honest with his employers and regulator. Instead, he sought, totally unsuccessfully, to suggest it was the employers' duty to divine his failures to abide by the rules. Taking all the foregoing into account, the Hearing Panel is of the view that the findings of guilty on Count #1 and Count #2 are fully justified and more than meet the applicable standard of proof. The Hearing Panel therefore hereby confirms their previous findings to that effect.

¶ 19 It cannot be overemphasized that adequate regulation is the lifeblood of the industry. It is the means by which the investing public's confidence in the integrity of the industry is maintained. There is not room for those, like Mr. Papp, who choose not to follow the rules and especially, to hide that fact. He had a choice; it was between joining the industry or staying out. Once he elected to become a part of it, he was bound by all the prevailing rules. It is necessary to make it clear to him, and all others who might be similarly inclined to be

selective, that the rules are not optional.

¶ 20 Dealing with the matter of fine first, the Hearing Panel considers that the suggestion of $40,000 is too high when considered against the amounts levied in the cases referred to by Staff. We find the analysis made by the Hearing Panel in *Kim (Re)* [2007] I.D.A.C.D. No. 54 and *Kotar (Re)* [2015] IIROC 7 to be the most helpful in respect of both the quantum of the fine and the issue of whether a suspension is appropriate and if so, for what period.

¶ 21 In the *Kim* case, a suspension was not imposed, although a fine of $25,000 was. The Hearing Panel said the following at paragraph 45:

> We believe that the respondent's termination by his former employer was equivalent to a suspension in this case. It had economic impact on him and brought public and industry attention to his situation. We consider no further suspension is necessary.

¶ 22 In the present case, Mr. Papp was summarily dismissed by his employer in September, 2014 and has been out of the industry for approximately two years. However, unlike Mr. Kim who cooperated fully with the investigation leading to the charges against him, Mr. Papp's behaviour was quite the opposite and he continues to this day to assert a right to act as he did. Even allowing for a notional credit for the period following his dismissal, taking an overall view based on the cases referred to us and the Guidelines, we have concluded that a further two year suspension coupled with a requirement to successfully write the examination based on the Conduct and Practice Handbook as a condition for re-registration is appropriate.

¶ 23 As to costs, we think the request for them to be set at $10,000 is reasonable and will so order.

¶ 24 In summary we order that the sanctions for Mr. Papp be as follows:

i. A fine in the amount of $20,000;

ii. A two year prohibition on the Respondent's re-registration with IIROC;

iii. The Respondent must successfully rewrite the examination based on the Conduct and Practice Handbook course; and

iv. Costs in the amount of $10,000.

DATED at Toronto, Ontario this 13th day of December, 2016.

John Lorn McDougall

Chair

F. Michael Walsh

Panel Member

Nick Savona

Panel Member